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SPEECH

OF

*Ms. 20*  
HON. LYMAN TRUMBULL,

OF ILLINOIS,

ON THE

FREEDMEN'S BUREAU—VETO MESSAGE;

DELIVERED IN THE

SENATE OF THE UNITED STATES,

FEBRUARY 20, 1866.



WASHINGTON:

CHRONICLE BOOK AND JOB PRINT.

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## FREEDMEN'S BUREAU--VETO MESSAGE.

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The Senate having under consideration the Freedmen's Bureau bill, returned by the President with his objections—

Mr. TRUMBULL said :

Mr. PRESIDENT: It was with surprise and profound regret that I read the extraordinary message of the President of the United States, returning with his objections the bill to amend an act entitled "An act to establish a Bureau for the Relief of Freedmen and Refugees," and for other purposes. It has been my desire that the various departments of the Government should harmonize in the restoration of all the States to their full constitutional relations in the Union. I have sought to forward such measures as would protect the loyal refugees and freedmen in the rebellious States, and would, as I supposed, harmonize with the views of the Executive. He had proposed to the rebel States, as conditions precedent to their resumption of practical relations with the United States, "that civil rights should be secured by laws applicable alike to whites and blacks," and had declared in his message, delivered to us at the commencement of the session, that "we shall but fulfill our duties as legislators by according equal and exact justice to all men, special privileges to none." The only object and design of the bill was to secure these rights to all men; and I am greatly surprised that a bill designed for such a purpose should have been returned by the Executive with a statement that it is "as inconsistent with the actual condition of the country as it is at variance with the Constitution of the United States." Having taken a somewhat active part in the passage of this bill through the Senate, I feel called upon to vindicate myself from the charge of having urged upon the Senate a bill so unconstitutional and so inconsistent with the actual condition of the country as this is now declared to be.

What is this amendment to the Freedmen's Bureau bill? It is not a measure establishing a bureau, but merely amendatory of an act already in existence; nor does it, as seems to be supposed by some, materially enlarge the powers of the Freedmen's Bureau as it already exists. It is an entire misapprehension to suppose that such was the object of the bill or such its effect. It does little more than give the sanction of law to what is already being done without any statute authorizing it. The Freedmen's Bureau, as I have said, already exists. Courts are held by the Freedmen's Bureau throughout the entire region of country where that bureau is in operation. Under the military authority laws inconsistent, as is believed, with the safety of the Government and incompatible with military operations are set aside at this time in eleven States. The object of the bill was to continue in existence the Freedmen's Bureau—not as a

permanent institution. Any such intent was disavowed during the discussion of the bill. It is true, no time is expressly limited in the bill itself when it shall cease to operate, nor is it customary to insert such a clause in a law; but it is declared that the bill shall operate until otherwise provided by law. It is known that the Congress of the United States assembles every year, and no one supposed that this bill was to establish a bureau to be ingrafted upon the country as a permanent institution; far from it. Nor is it a bill that is intended to go into the States and take control of the domestic affairs of the States.

The original act and this amendatory bill together were simply designed to protect refugees and freedmen from persecution, aid them to find employment, and to provide, not for four million emancipated slaves and millions of refugees, but only for the indigent, for those who were unable to take care of themselves, and that temporarily, until provision could be made so that they could become self-supporting. In consequence of the war, thousands of Union men had been driven from their homes all over the South, and particularly was this the case in Tennessee. They had been stripped of their property. Women and children had fled destitute from their homes. They had neither food to eat nor clothes to wear. They flocked around our armies, and during the whole progress of the war they were fed by our supplies. So also with the freedmen. Congress at an early day passed a law declaring free all slaves who should come within the lines of our army. They came flying within our lines, without clothing, without hats, oftentimes wounded, foot-sore and distressed. Many of them entered our ranks to fight for the cause of the country, and others we fed and clothed from our stores.

While the war was progressing, and while these people were flocking around our army, on the 3d of March, 1865, not yet one year ago, the Congress of the United States passed a law to create a special department of the military establishment whose duty it should be to look to their pressing wants. That was called the Freedmen's Bureau, and officers were assigned chiefly from the army to take charge of it. Since that time the conflict of arms has ceased, but there are still upon our hands some of these destitute people who must be provided for—a far less number than would have been upon our hands if no system had been devised for taking care of them, for finding them employment, for settling them upon tracks of land wherever it could be done; and I undertake to say that there has been saved to the Government millions of money by the establishment of a system through which employment was found for these people, and they became self-supporting who otherwise would have been entirely dependent on the bounty of the Government for support.

Since this Freedmen's Bureau was organized an amendment has been adopted to the Constitution of the United States declaring that slavery shall no longer exist within the jurisdiction of the United States. By virtue of that enactment millions of slaves have become free. They have become free in the midst of a hostile population. They have become free without any of this world's goods, not owning even the hats upon their heads or the coats upon their backs, without supplies of any kind, not knowing often where to obtain the next meal to save them from starvation. Something must be done to protect them in their new rights, to find employment for the able-bodied, and take care of the suffering; and the Freedmen's Bureau, as originally established and now proposed to be amended, was designed to do that something—not by furnishing food and clothing for all formerly in slavery. Most of them, with the aid of the bureau, have been able to provide for themselves. The number of indigent freedmen receiving supplies has been comparatively few, and in



many instances less than the number of white refugees receiving assistance in the same locality, as I shall presently show.

The President in his veto message—and I design to treat it candidly and without any feeling, for I have no other object in view than to adopt such measures as shall best tend to promote the peace and happiness of the whole country—says:

“I might call to mind, in advance of these objections, that there is no immediate necessity for the proposed measure. The act to establish a Bureau for the Relief of Freedmen and Refugees, which was approved in the month of March last, has not yet expired. It was thought stringent and extensive enough for the purpose in view in time of war.”

Now, sir, when will that act expire, and what was it? It provided in its first section—

“That there is hereby established in the War Department, to continue during the present war of rebellion and for one year thereafter, a Bureau of Refugees, Freedmen, and Abandoned Lands.”

By the terms of the act it was to continue “during the present war of rebellion and for one year thereafter.” Now, when did the war of rebellion cease? So far as the conflict of arms is concerned we all admit that the war of rebellion ceased when the last rebel army laid down its arms, and that was some time in the month of May when the rebel army in Texas surrendered to the Union forces. I do not hold that the consequences of the war are over. I do not understand that peace is restored with all its consequences. We have not yet escaped from the evils inflicted by the war. Peace and harmony are not yet restored, but the war of rebellion is over, and this bureau must expire in May next, according to the terms of the act that was passed on the 3d of March, 1865, and according to the views of the President as expressed in his veto message.

The President says:

“The bill proposed to establish, by authority of Congress, military jurisdiction over all parts of the United States containing refugees and freedmen.”

Sir, I desire to speak respectfully of the Executive, but I would like to know where in that bill is any provision extending military jurisdiction over all parts of the United States containing refugees and freedmen? The bill contains no such clause. It is a misapprehension of the bill. The clause of the bill upon that subject is this:

“And the President of the United States, through the War Department and the Commissioner, shall extend military jurisdiction and protection over all employees, agents, and officers of this bureau in the exercise of the duties imposed or authorized by this act or the act to which this is additional.”

Is not the difference manifest to everybody between a bill that extends military jurisdiction over the officers and employees of the bureau and a bill which should extend military jurisdiction over all parts of the United States containing refugees and freedmen? This bill makes the Freedmen's Bureau a part of the War Department. It makes its officers and agents amenable to the Rules and Articles of War. But does that extend jurisdiction over the whole country where they are? How do they differ from any other portion of the army of the United States? The army of the United States, as every one knows, is governed by the Rules and Articles of War, wherever it may be, whether in Indiana or in Florida, and all persons in the army and a part of the military establishment are subject to these Rules and Articles of War; but did anybody ever suppose that the whole country where they were was under military jurisdiction? If a company of soldiers are stationed at one of the forts in New York harbor, the officers and soldiers of that company are subject to military

jurisdiction; but was it ever supposed that the people of the State of New York were thereby placed under military jurisdiction? It is an entire misapprehension of the provisions of the bill. It extends military jurisdiction nowhere, it merely places under jurisdiction the persons belonging to the Freedmen's Bureau who, nearly all of them, are now under military jurisdiction. The Commissioner at the head of that bureau is an officer of the army of the United States and under military jurisdiction. I believe every assistant commissioner is an officer of the United States Army and under military jurisdiction. But the bill does authorize the President, if he thinks proper, instead of detailing military officers, to appoint civilians in some cases; and in case he does appoint civilians, then by the provisions I have read these civilians subject themselves to military jurisdiction and are entitled to military protection in the performance of the duties imposed by this act.

But passing over that objection, which I think I have sufficiently answered, the next which I will notice is the statement of the President that "the country is to be divided into districts and sub-districts, and the number of salaried agents to be employed may be equal to the number of counties or parishes in all the States where freedmen and refugees are to be found."

Now, sir, what is the provision of the bill on this subject? For a great deal seems to be made out of this objection urged here in the Senate, published to the country, and now reiterated in the veto message of the President, that the bill makes it necessary to appoint a large number of salaried officers and agents throughout the country, and it is said to be very objectionable upon that ground. I have already stated that a single officer need not be employed other than those we now have. I have already stated that it is in the power and discretion of the President to detail from the army officers to perform all the duties of the Freedmen's Bureau, and in case they are detailed the bill provides that they shall serve without any additional compensation or allowance. But, sir, is it necessary, or was it ever contemplated, that there should be an officer or agent of the Freedmen's Bureau in every county and every parish where refugees and freedmen are to be found? By no means. What is the bill upon that subject? The second section provides that—

"The Commissioner, with the approval of the President, and when the same shall be necessary for the operations of the bureau, may divide each district into a number of sub-districts, not to exceed the number of counties or parishes in such district."

Does this make it imperative upon the President to appoint an agent in each county and parish? It authorizes him "when the same shall be necessary for the operations of the bureau;" not otherwise. He has no authority under the bill to appoint a single agent unless it is necessary for the operations of the bureau, and then he can only appoint so many as may be needed. Sir, it never entered the mind, I venture to say, of a single advocate of this bill that the President of the United States would so abuse the authority intrusted to him as to station an agent in every county in these States; but it was apprehended that there might be localities in some of these States where the prejudice and hostility of the white population and the former masters were such toward the negroes that it would be necessary to have an agent in every county in that locality for their protection; and in order to give the President the necessary discretion, where this should be requisite, the bill authorized, when it was necessary for operations of the bureau, the appointment of an agent in each county or parish; and the word "parish" was used to designate,

those districts of country in the State of Louisiana which are not known as counties, but as parishes, there being in that State no county organizations.

I should have been very glad, and I think I may say the committee who reported this bill originally to the Senate would have been glad, if we could have limited the officials in the law to a far less number of agents than it is possible to employ under it. But in order to vest the President with sufficient power in some localities, it was necessary, legislating by general law, to give him much larger power than would be necessary in other localities. And yet now this bill is arraigned, and it is said that "the country is to be divided into districts and sub-districts, and the number of salaried agents to be employed may be equal to the number of counties or parishes in all the United States where freedmen and refugees are to be found."

Sir, the country is not to be divided, I undertake to say, into districts and sub-districts unless the President of the United States finds it necessary to do so for the protection of these people; and if the law should be abused in that respect, it would be because he abused the discretion vested in him by Congress, and not because the law required it. It makes no such requirement. The original law required that there be appointed one Commissioner and ten assistant commissioners, and the amendatory act which the President has vetoed authorized the appointment of twelve assistant commissioners, two more than the present law. But as to this division into sub-districts and the appointment of this innumerable number of agents that have so alarmed the minds of Senators, not one of them is to be appointed, by the express terms of the bill, unless it is necessary to carry out its operations; and who believes that any such number would be necessary as one in each county? If one in each county were appointed under the bill, I undertake to say that it would be a most manifest abuse of the discretion which the bill vests in the officers who are to carry it into execution.

The President further says, in his veto message :

"The subjects over which this military jurisdiction is to extend in every part of the United States include protection to 'all employees, agents, and officers of this bureau in the exercise of the duties imposed' upon them by the bill. In eleven States it is further to extend over all cases affecting freedmen and refugees discriminated against by 'local law, custom, or prejudice.' In those eleven States the bill subjects any white person who may be charged with depriving a freedman of 'any civil rights or immunities belonging to white persons' to imprisonment or fine, or both, without, however, defining the 'civil rights and immunities, which are thus to be secured to the freedmen by military law. This military jurisdiction also extends to all questions that may arise respecting contracts."

After reading that most extraordinary statement, what will be said when I show from the bill itself that so far from extending this military jurisdiction over all questions arising concerning contracts, and so far from extending military jurisdiction anywhere, it is expressly provided by the very terms of the bill that no such jurisdiction shall be exercised except where the President himself has established and is maintaining military jurisdiction, which he is now doing in eleven States, and the very moment that he ceases to maintain military jurisdiction, that very moment the military jurisdiction conferred over freedmen by this act ceases and terminates. I will read from the eighth section of the bill, which is explicit upon this point :

"The jurisdiction conferred by this and the preceding section on the officers and agents of this bureau shall cease and determine whenever the discrimination on account of which it is conferred ceases, and in no event to be exercised in any State

in which the ordinary course of judicial proceedings has not been interrupted by the rebellion, nor in any such State after said State shall have been fully restored in all its constitutional relations to the United States, and the courts of the State and of the United States within the same are not disturbed or stopped in the peaceable course of justice."

Sir, the whole jurisdiction to try and dispose of cases by the officers and agents of the Freedmen's Bureau is expressly limited to the time when these States shall be restored to their constitutional relations and when the courts of the United States and of the States are not interrupted or interfered with in the peaceable course of justice. So far, then, from this bill establishing a military jurisdiction, it confers no jurisdiction to try cases one moment after the courts are restored and are no longer interrupted in the peaceable administration of justice. And, sir, let me ask, by what authority is it that military tribunals are sitting to-day at Alexandria, Virginia? By what authority is it that the writ of *habeas corpus* is suspended to-day in eleven States when the Constitution of the United States says the privilege of that writ shall not be suspended except when in cases of rebellion and invasion the public safety may require it. By what authority does the President of the United States object to the exercise of military jurisdiction by that part of the army charged with the execution of the provisions of the Freedmen's Bureau when he exercises that military jurisdiction himself by other portions of the army? It is not long since a military commission in the State of Georgia, without presentment or indictment of a grand jury, tried and convicted white men for the murder of a negro, and, as I understand, by the fiat of Andrew Johnson himself and by the judgment of this military commission, the men were executed for the murder. Not long ago Benjamin W. Ivey, of Robeson county, North Carolina, without presentment or indictment of a jury, was tried by a *military commission* (ordered by Major General Ruger) upon a charge of wilfully and maliciously shooting a negro, was found guilty, and sentenced to ten years' hard labor in the State prison at Auburn, New York, and from the decision of this arbitrary tribunal no appeal was allowed. It is but a few days since a military commission was sitting in Alexandria trying persons charged with crimes; and they are held all over the South. And yet that part of the army connected with the Freedmen's Bureau cannot exercise any such authority because it is unconstitutional! Unconstitutional to do by virtue of a law of Congress what is done without any law!

Sir, let me read what is being done in these southern States at this very time:

[General Orders, No. 3.]

WAR DEPARTMENT,  
ADJUTANT GENERAL'S OFFICE,  
WASHINGTON, January 12, 1866.

To protect persons against improper civil suits and penalties in late rebellious States:

Military division and department commanders, whose commands embrace or are composed of any of the late rebellious States, and who have not already done so, will at once issue and enforce orders protecting from prosecution or suits in the State or municipal courts of such State, all officers and soldiers of the armies of the United States, and all persons thereto attached, or in anywise thereto belonging, subject to military authority, charged with offenses for acts done in their military capacity or pursuant to orders from proper military authority; and to protect from suit or prosecution all loyal citizens or persons charged with offenses done against the rebel forces, directly or indirectly, during the existence of the rebellion; and all persons, their agents, or employees, charged with the occupancy of abandoned lands or plantations, or the possession or custody of any kind of property whatever, who occupied, used, possessed, or controlled the same pursuant to the order of the

President or any of the civil or military departments of the Government, and to protect them from any penalties or damages that may have been or may be pronounced or adjudged in said courts in any of such cases; and also protecting colored persons from persecutions in any of said States charged with offenses for which white persons are not prosecuted or punished in the same manner and degree.

By command of Lieutenant General Grant:

E. D. TOWNSEND,  
*Assistant Adjutant General.*

There is an order issued necessarily under the authority of the President, who is Commander-in-Chief, directing department commanders everywhere to protect loyal citizens against prosecutions by rebels for acts done in support of the Government, and to protect colored persons charged with offenses for which white persons are not punished in the same manner and degree. Where is the authority to issue that order, dated on the 12th day of January last? Sir, I want to know, if there was authority to issue such an order as that which is to-day being executed all through the South, whether it is possible that Congress has no authority to transfer that jurisdiction from department commanders to the commander of the Freedmen's Bureau, who is as much an officer of the army as is Lieutenant General Grant himself?

But where does the Executive get the power? The President is but the Commander-in-Chief of the armies, made so by the Constitution; but he cannot raise an army or a single soldier, he cannot appoint a single officer without the consent of Congress. He cannot make any rules and regulations for the government of the army without our permission. The Constitution of the United States declares in so many words that Congress shall have power "to make rules for the government and regulation of the land and naval forces" of the United States. Can it be that that department of the Government, vested in express terms by the Constitution itself with authority to make rules for the government and regulation of the land and naval forces, has no authority to direct that portion of the land and naval forces employed in the Freedmen's Bureau to exercise this jurisdiction instead of department commanders? Sir, it is competent for Congress to declare that no department commanders shall exercise any such authority, it is competent for Congress to declare that a court martial shall never sit, that a military commission shall never be held, and the President is as much bound to obey the law as the humblest citizen in the land.

Sir, I will read another order issued within a few days, dated the 17th of February, of the present year:

HEADQUARTERS ARMIES OF THE UNITED STATES,  
WASHINGTON, *February 17, 1866.*

You will please send to these headquarters, as soon as practicable, and from time to time thereafter, such copies of newspapers published in your department as contain sentiments of disloyalty and hostility to the Government in any of its branches, and state whether such paper is habitual in its utterances of such sentiments. The persistent publication of articles calculated to keep up hostility of feeling between the people of the different sections of the country cannot be tolerated. This information is called for with a view to their suppression, which will be done from these headquarters only.

By command of Lieutenant General Grant:

T. S. BOWERS,  
*Assistant Adjutant General.*

There is an order issued within a week past, the object of which is to stop the publication of newspapers containing disloyal sentiments. By what authority, if this be a time of peace, does the military make such an order? Can we not confer that power, if the military can properly exer-

cise it at all, on another branch of the Army? It is surprising to me that persons in the daily exercise of the very powers conferred by this amendment of the Freedmen's Bureau should deny the authority of Congress to pass the act.

But, says the President,

"The trials having their origin under this bill are to take place without the intervention of a jury, and without any fixed rules of laws or evidence."

Do not all military trials take place in that way? Did anybody ever hear of the presentment of a grand jury in a case where a court-martial sat for the trial of a military offense, or the trial of a person charged with any offense cognizable before it? Again he says:

"The rules on which offenses are to be 'heard and determined' by the numerous agents are such rules and regulations as the President, through the War Department, shall prescribe. No previous presentment is required, nor any indictment charging the commission of a crime against the laws; but the trial must proceed on charges and specifications. The punishment will be—not what the law declares, but such as a court-martial may think proper; and from these arbitrary tribunals there lies no appeal, no writ of error to any of the courts in which the Constitution of the United States vests exclusively the judicial power of the country."

True—except the bill limits the punishment to a "fine not exceeding \$1,000, or imprisonment not exceeding one year, or both;" and yet that is precisely what is to-day being done, and has been done for the last four years under the same direct sanction of the President of the United States. This Freedmen's Bureau bill confers no authority to do this except in those regions of country where military authority prevails, where marshal law is established, where persons exercising civil authority act in subordination to the military power, and where, the moment they transcend the proper limits as fixed by military orders, they are liable to be arrested and punished without the intervention of a grand jury, or without the right of appeal to any of the judicial tribunals of the country. What would have been thought of an appeal from the decision of the military tribunal that sat in the city of Washington and condemned the murderers of our late President, to the judicial tribunals of the country! Where military authority bears sway, where the courts are overborne, is it not an absurdity to say that you must have a presentment of a grand jury and a trial in court? Sir, it is an old adage, that the law never requires impossibilities. There was a time when in all these rebellious States there was not one judicial officer recognizing the authority of the Government of the United States, when there was not one single court where a grand jury could be impaneled to maintain the law and Constitution of the United States, and are we to be told, and is it to be seriously argued, that in a district of country thus situated, where courts cannot be held, where in the conflict of arms the civil tribunals are overborne and expelled, and where martial law prevails, that no person can be tried or punished for any offense by the military power, which is the only power in existence at the time?

All parts of the Constitution of the United States are to be construed together and in harmony with each other; and although the Constitution does provide, for the protection of the citizen, that he shall not be tried for a criminal offense except on the indictment or presentment of a grand jury, and that he shall be entitled to a trial before a petit jury, manifestly these clauses of the Constitution apply to a condition of things where it is possible to have a court, to have a grand jury and a petit jury empaneled, and to bring the offender to justice before the civil tribunals; and the framers of the Constitution never intended, and such is not the meaning of the instrument, that when the civil tribunals were overborne and a grand jury could not be empaneled, still you must have the presentment or indictment

of a grand jury. No, sir, the same Constitution that contains these guarantees for the protection of the citizen in localities where the courts are in operation, and where they are not interrupted in the peaceable administration of justice, contains also a clause authorizing the calling out of the militia to enforce the laws of the Union, and put down insurrection and rebellion; and when this army is called forth it operates, Mr. President, not as civil tribunals through juries and courts, but it operates as armies operate. It proceeds to put down rebellion by slaying the rebel if he is found in arms, without empancling juries; but, sir, it does it in the exercise of the power which is conferred upon the Army. It acts as an army and not as a court, and the Constitution authorizes it to act as an army and not as a court, and the very reason of giving this power to call forth the army is because the courts are unable to preserve the peace and punish offenders.

The President says:

"I cannot reconcile a system of military jurisdiction of this kind with the words of the Constitution."

Sir, if I might be permitted to ask a question of the President of the United States, I would inquire, if you cannot reconcile a system of military jurisdiction of this kind with the words of the Constitution why have you been exercising it? Why have you been organizing courts-martial and military commissions all over the South, trying offenders and punishing some of those with death? Why have you authorized the present Freedmen's Bureau to hold bureau courts all through the South? This has all been done by your permission, and is being done to-day. Then, sir, if you are in the exercise of this power now, if you have been exercising it from the day you became President of the United States, how is it you cannot reconcile a system of jurisdiction of this kind with the words of the Constitution?

Sir, does it detract from the President's authority to have the sanction of law? I want to give that sanction. I do not object to the exercise of this military authority of the President in the rebellious States. I believe it is constitutional and legitimate and necessary; but I believe Congress has authority to regulate it. I believe Congress has authority to direct that this military jurisdiction shall be exercised by that branch of the Army known as the Freedmen's Bureau, as well as by any other branch of the Army.

But the President tells us further that "the rebellion is, in fact, at an end." The measure, therefore, seems to be as inconsistent with the actual condition of the country as it is at variance with the Constitution of the United States.

Sir, in reply to that I need only ask a question which I believe I have once already asked. If the rebellion is at an end, will anybody tell me by what authority the President of the United States suspends the writ of *habeas corpus* in those States where it existed. The act of Congress of March, 1863, authorized the President of the United States to suspend the writ of *habeas corpus* during the present rebellion. He says it is at an end. By what authority, then, does he suspend the writ? The Constitution of the United States declares that the writ of *habeas corpus*, that great writ of right for the protection of the citizen, shall only be suspended when in cases of rebellion or invasion the public safety requires it. The President tells you officially that the rebellion is ended. We know there is no invasion. By what authority, then, does he declare the writ of *habeas corpus* suspended? Sir, the rebellion is ended, so far as the conflict of arms is concerned; but the consequences of the rebellion are not ended; peace is not restored; the safety of the citizens where the rebellion existed is not yet established, and

till it is, till the courts can be re-established, till they can administer justice peaceably, till the citizens can be protected from lawless bands, from prejudiced slaveholders, from incensed rebels, the military authority may properly be continued, and the President is authorized, in my opinion, to suspend the writ of *habeas corpus*. But, sir, by his own declaration let him stand or fall. If it is competent to suspend the writ, if it is competent for military tribunals to sit all through the South and entertain military jurisdiction, this bill, which does not continue military jurisdiction, does not establish military jurisdiction, but only authorizes the officers of this bureau, while military jurisdiction prevails, to take charge of that particular class of cases affecting the refugee or freedman where he is discriminated against, cannot be obnoxious to any constitutional objection.

The President further says that—

“This bill proposes to make the Freedmen’s Bureau, established by the act of 1865, as one of many great and extraordinary military measures to suppress a formidable rebellion, a permanent branch of the public administration, with its power greatly enlarged.”

That is a mistake. It is not intended, I apprehend, by anybody, certainly not by me, to make it a permanent branch of the public administration; and I am quite sure that the powers of the bureau are not by the amendatory bill greatly enlarged. A careful examination of the amendment will show that it is in some respects a restriction on the powers already exercised.

The President says:

“The third section of the bill authorizes a general and unlimited grant of support to the destitute and suffering refugees and freedmen, their wives and children.

Now, let us see if it does that. In the first place let us see what the original law was. The second section of the original act is in these words:

“That the Secretary of War may direct such issues of provisions, clothing, and fuel as he may deem needful for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen, and their wives and children, under such rules and regulations as he may direct.”

That is the present law enacted March 3, 1865. Now, what is the third section of the bill which the President says contains such an unlimited grant of support to the destitute and suffering refugees, their wives and children? I will read that third section:

“That the Secretary of War may direct such issues of provisions, clothing, fuel, and other supplies, including medical stores and transportation, and afford such aid, medical or otherwise, as he may deem needful for the immediate and temporary shelter and supply of destitute and suffering refugees and freedmen, their wives and children, under such rules and regulations as he may direct: *Provided*, That no person shall be deemed ‘destitute,’ ‘suffering,’ or ‘dependent upon the Government for support,’ within the meaning of this act, who, being able to find employment, could by proper industry and exertion avoid such destitution, suffering, or dependence.”

This proviso is not in the original law. That authorizes the issuing of these supplies, all except the medical supplies and transportation, just the same as the bill which the President has vetoed. Does he object to this bill on the ground that it authorizes medical aid to be furnished the sick? Or does he object to it because of the proviso which limits its operation, and declares that nobody shall be deemed destitute and suffering under the provisions of the act who is able by proper industry and exertion to avoid such destitution? Why, sir, it is a limitation on the existing law. Does that look much like taking care of four million people—a provision that expressly limits the operation of this act to those only who cannot find employment? A statement of the fact is all that is necessary to meet this statement in the veto message.



After commenting upon the third section of the bill, which I have just read, the President says:

"Succeeding sections make provision for the rent or purchase of landed estates for freedmen, and for the erection for their benefit of suitable buildings for asylums and schools, the expenses to be defrayed from the Treasury of the whole people. The Congress of the United States has never heretofore thought itself empowered to establish asylums beyond the limits of the District of Columbia, except for the benefit of our disabled soldiers and sailors. It has never founded schools for any class of our own people; not even for the orphans of those who have fallen in defence of the Union, but has left the care of education to the much more competent and efficient control of the States, of communities, of private associations, and of individuals. It has never deemed itself authorized to expend the public money for the rent or purchase of homes for the thousands, not to say millions, of the white race who are honestly toiling from day to-day for their subsistence. A system for the support of indigent persons in the United States was never contemplated by the authors of the Constitution; nor can any good reason be advanced why, as a permanent establishment, it should be founded for one class or color of our people more than another. Pending the war many refugees and freedmen received support from the Government, but it was never intended that they should thenceforth be fed, clothed, educated, and sheltered by the United States."

I have read that whole paragraph in order to do no injustice to the views of the President. The objection which the President makes is that it has never heretofore been thought that Congress was empowered to pass provisions of this character. The answer to that is this: we never before were in such a state as now; never before in the history of this Government did eleven States of the Union combine together to overthrow and destroy the Union; never before in the history of this Government have we had a four years' civil war; never before in the history of this Government have nearly four million people been emancipated from the most abject and degrading slavery ever imposed upon human beings; never before has the occasion arisen when it was necessary to provide for such large numbers of people thrown upon the bounty of the Government, unprotected and unprovided for. But, sir, wherever the necessity did exist the Government has acted. We have voted hundreds of thousands and millions of dollars, and are doing it from year to year, to take care of and provide for the destitute and suffering Indians. We appropriated, years ago, hundreds of thousands of dollars to take care of and feed the savage African who was landed upon our coast by slavers. We provided by law that whenever savages from Africa should be brought to our shores, or whenever they should be captured on board of slavers, the President of the United States should make provision for their maintenance and support for five years on the coast of Africa. He was authorized by law to appoint agents to go to Africa to provide means to feed them, and we paid the money to do it. And yet, sir, can we not provide for those among us who have been held in bondage all their lives, who have never been permitted to earn one dollar for themselves, who, by the great constitutional amendment declaring freedom throughout the land, have been discharged from bondage to their masters who have hitherto provided for their necessities in consideration of their services? Can we not provide for these destitute persons of our own land on the same principle that we provide for the Indians, that we provide for the savage African? Sir, they cannot provide for themselves. What are they to do? In one part of his message the President says they are permitted to go where they please. I will show by and by that by local legislation this privilege is not permitted them.

But what sort of protection would that be to the negro if it were so? Here are hundreds and thousands of these poor, ignorant, degraded human beings who never went off the plantation where they were born in their lives. They do not know how to travel. They do not know where to go; they have

no means to pay for subsistence by the way; they do not know whither the railroads lead; the railroads would not carry them if they did, and were able to pay. As a friend suggests, they cannot read the finger-boards by the way-side; and where are they to go, and what is to be done with them? They are to go to the same place, and the same is to be done with them that would have been done with the hundreds of natives from Africa who a few years ago were landed destitute on our coast: they are to be taken and reduced into slavery again, or they are to perish and die for want of subsistence, or somebody must temporarily look after and provide for them.

But we have never rented lands, the President says, for the white race; we have never purchased lands for them. What do we propose to do by this bill? Does this bill provide for purchasing any land? Let us see:

“Sec. 6. *And be it further enacted*, That the Commissioner shall, under the direction of the President, procure in the name of the United States, by grant or purchase, such lands within the districts aforesaid as may be required for refugees and freed-men dependent on the Government for support; and he shall provide or cause to be erected suitable buildings for asylums and schools. But no such purchase shall be made, nor contract for the same entered into, nor other expenses incurred, until after appropriations shall have been provided by Congress for such purposes.”

This authorizes, if the President thinks proper to direct it, the purchase or renting of lands on which to place these indigent people; but before any land can be purchased or rented, before any contract can be made on the subject, there must be an appropriation made by Congress. This bill contains no appropriation. If the President is opposed to the rent or purchase of land, and Congress passes a bill appropriating money for that purpose, let him veto it if he thinks it unconstitutional; but there is nothing unconstitutional in this bill. This bill does not purchase any land; but it prevents even a contract on the subject until another law shall be passed appropriating the money for the purpose.

But, sir, what is the objection to it if it did appropriate money? I have already undertaken to show, and I think I have shown, that it was the duty of the United States, as an independent nation, as one of the Powers of the earth, whenever there came into its possession an unprotected class of people, who must suffer and perish but for its care, to provide for and take care of them. When an army is marching through an enemy's country, and poor and destitute persons are found within its lines who must die by starvation if they are not fed from the supplies of the army, will anybody show me the constitutional provision or the act of Congress that authorizes the general commanding to feed the starving multitude from his army supplies? And has it not been done by every one of your commanders all through the South? Whenever a starving human being, man, woman, or child, no matter whether white or black, rebel or loyal, came within the lines of the army, to perish and die unless fed from our supplies, there has never been an officer in our service, and thank God there has not been, who did not relieve the sufferer. If you want to know where the constitutional power to do this is, and where the law is, I answer, it is in that common humanity that belongs to every man fit to bear the name, and it is in that power that belongs to us as a Christian nation, carrying on war upon civilized principles.

If we had the right, then, to feed these people as we did, have we not the right to take care of them in the cheapest way we can? If when General Sherman was passing through Georgia he found the lands abandoned; if their able-bodied owners had entered the rebel army to fight against us; if the women and children had fled and left the land a waste, and he had, as is the fact, thousands of persons hanging upon his army dependent upon him for support, I ask you, Mr. President, if it was believed that it would be cheaper to support these people upon these lands than to buy provisions and

feed them, might he not do so? May we not resort to whatever means are most judicious to protect from starvation that multitude which common humanity requires us to feed?

Nor, sir, is it true that no provision has been made by Congress for the education of white people. We have given all through the new States one section of land in every township for the benefit of common schools. We have donated hundreds of thousands of acres of land to all the States for the establishment of colleges and seminaries of learning. How did we get this land? It was purchased by our money and then we gave it away for purposes of education. The same right exists now to provide for these people, and it is not simply for the black people, but for the white refugees as well as the black, that this bill provides.

Again, the President says:

"The appropriations asked by the Freedmen's Bureau, as now established, for the year 1866, amount to \$11,745,000. It may be safely estimated that the cost to be incurred under the pending bill will require double that amount."

How much was expended last year for the benefit of refugees and freedmen—not through the Freedmen's Bureau, but through the army? Have you any means of knowing? The President did not tell us, but I presume that a far larger sum in proportion to the number that were thrown upon our hands was expended before the creation of the Freedmen's Bureau in feeding and taking care of refugees and freedmen than since its establishment. Since that time the authority of the Government has been extended over all the rebellious States, and we have had a larger number of refugees and freedmen to provide for, but in proportion to the number I have no doubt that the expense is less now than it was before the establishment of the bureau.

Again, the President says:

"In this connection the query presents itself whether the system proposed by the bill will not, when put into complete operation, practically transfer the entire care, support, and control of four million emancipated slaves to agents, overseers, or taskmasters, who, appointed at Washington, are to be located in every county and parish throughout the United States containing freedmen and refugees."

I scarcely know how to reply to that most extravagant statement. I have already shown that it would be a great abuse of the power conferred by this bill to station an agent in every county. I have already stated that but a small proportion of the freedmen are aided by the Freedmen's Bureau. In this official document the President has sent to Congress the exaggerated statement that it is a question whether this bureau would not bring under its control the four million emancipated slaves. The census of 1860 show that there never were four million slaves in all the United States, if you counted every man, woman, and child, and we know that the number has not increased during the war. But, sir, what will be thought when I show as I shall directly show by official figures, that so far from providing for four million emancipated slaves, the Freedmen's Bureau never yet provided for a hundred thousand, and as restricted by the proviso to the third section of the present bill, it could never be extended under it to a larger number. Is it not most extraordinary that a bill should be returned with the veto from the President on the ground that it provides for four million people, when, restricted as it is in its operations, and having been in operation now since March last, it has never had under its control a hundred thousand? I have here an official statement from the Freedmen's Bureau, which I beg leave to read in this connection:

"The greatest number of persons to whom rations were issued, including the commissary department and bureau issued to persons without the Army, is one hundred and forty-eight thousand one hundred and twenty."

Who are they? I said there were not a hundred thousand freedmen provided for by the bureau.

"Whites, 57,369, colored, 90,607, Indians, 133. The greatest number by the bureau was 49,932 in September. The total number for December was 17,025."

That sounds a little different from four millions. Seventeen thousand and twenty-five were all that were provided for by the Freedmen's Bureau in the month of December last, the number getting less and less every month. Why? Because by the kind and judicious management of that bureau places of employment were found for these refugees and freedmen. When the freedmen were discharged from their masters' plantations they were assisted to find places of work elsewhere.

"The above figures are based on full rations. The number of persons aided by rations or parts of rations, for December, are, colored 36,016, whites 4,992."

"I have given you these figures hastily, from the records—will carefully review."

This communication is from Major General Howard, the Commissioner of the Freedmen's Bureau. In the same connection I wish to read the testimony (which has been kindly furnished me) that was given before the reconstruction committee by Major General Fiske, who is commissioner of the Freedmen's Bureau for the State of Tennessee—and I wish these gentlemen who are declaiming so loudly against feeding the negro to notice the statistics. The President says, in his veto message, that Congress has never thought of making these provisions for the white people. Let us see what provisions have been made for the white people. General Fiske was asked:

"*Question.* How large is the pecuniary support that you are obliged to extend to the freedmen in Tennessee?"

"*Answer.* I am not to-day issuing a single ration to freedmen in Tennessee except to about one hundred orphan children and thirty old people at Memphis, and about sixty orphan children and twenty-five old people at Nashville; that is all.

"*Question.* Do you issue rations to white people in Tennessee?"

"*Answer.* During the last year the rations issued to white people in Tennessee have been much in excess of those issued to freedmen. When I took charge of my district the Government was feeding twenty-five thousand people; in round numbers about seventeen thousand five hundred white persons, and seven thousand five hundred blacks. The month preceding the establishment of the Freedmen's Bureau, for rations alone for that class of people the sum of \$97,000 was paid.

"My first efforts were to reduce the number of those beneficiaries of the Government, to withhold the rations and make the people self-supporting as far as possible. And in the course of four months I reduced the monthly expenses from \$97,000 to \$5,000."

That is what the Freedmen's Bureau has done in the State of Tennessee by the sworn testimony of General Fiske, whose word nobody would question, delivered within a few days before the reconstruction committee of the two Houses; and this is denounced as an expensive establishment! I undertake to say that the Freedmen's Bureau has already saved this nation millions of money, and if continued, it will save it millions more. But it is not simply in money that the country is to be benefitted. There are in schools seventy thousand colored children, chiefly placed there through the agency of the Freedmen's Bureau. An agency which reduces your expenses, educates colored children, and provides homes for the destitute, is now denounced as expensive and its establishment unconstitutional. General Fiske further says:

"And in the course of four months I reduced the monthly expenses from \$97,000 to \$5,000; saving within that time on subsistence ten times as much money as the whole Freedmen's Bureau cost in the entire district, including all salaries paid to officers and agents for the Government.

“*Question.* Is the military support of the Government required now in Tennessee in aid of your bureau?”

“*Answer.* It is.

“*Question.* Do you believe that the affairs of the bureau could be safely administered there without the military support of the Government?”

“*Answer.* I do not.

That is all I desire to read from the testimony of General Fiske in refutation of the assumption in this message that the bill is intended to provide for the education and support of four million black people, when the evidence shows that far more whites than blacks are provided for in Tennessee; that the bureau has been a means of economy to the Government, and that the expense of feeding refugees and freedmen has been reduced from \$97,000 to \$5,000 in one district in four months.

“In addition to the objections already stated”—

says the President—

“the fifth section of this bill proposes to take away land from its former owners without any legal proceedings being first had.”

I regret that a statement like that should inadvertently (for it must have been inadvertent) have found a place in this veto message. The fifth section of the bill does not propose to take away lands from anybody. I will read it, and we shall see what it is:

“That the occupants of lands under Major General Sherman’s special field order, dated at Savannah, January 16, 1865, are hereby confirmed in their possession.”

Is not that a different thing from taking away land from anybody? Do you take a thing away from another person when you have it in your possession already? Here are certain occupants upon lands in pursuance of an order of one of the major generals of your army, and it is proposed by an act of Congress to protect them there temporarily in that possession. Is that taking away land from somebody? I will read what the President says in reference to that section, and then I will read the whole section:

“In addition to the objections already stated the fifth section of the bill proposes to take away land from its former owners without any legal proceedings being first had, contrary to that provision of the Constitution which declares that no person shall ‘be deprived of life, liberty, or property, without due process of law.’ It does not appear that a part of the lands to which this section refers may not be owned by minors, or persons of unsound mind, or by those who have been faithful to all their obligations as citizens of the United States. If any portion of the land is held by such persons, it is not competent for any authority to deprive them of it. If, on the other hand, it be found that the property is liable to confiscation, even then it cannot be appropriated to public purposes until, by due process of law, it shall have been declared forfeited to the Government.”

This is what the President says. Now, I will read the section itself:

“SEC. 5. *And be it further enacted,* That the occupants of land under Major General Sherman’s special field order, dated at Savannah, January 16, 1865, are hereby confirmed in their possession for the period of three years from the date of said order, and no person shall be disturbed in or ousted from said possession during said three years, unless a settlement shall be made with said occupant, by the former owner, his heirs, or assigns, satisfactory to the Commissioner of the Freedmen’s Bureau: *Provided,* That whenever the former owners of lands occupied under General Sherman’s field order shall make application for restoration of said lands, the Commissioner is hereby authorized, upon the agreement and with the written consent of said occupants, to procure other lands for them by rent or purchase, not exceeding forty acres for each occupant, upon the terms and conditions named in section four of this act, or to set apart for them, out of the public lands assigned for that purpose in section four of this act, forty acres each, upon the same terms and conditions.”

Now, it will be seen that this fifth section, so far from taking land from anybody, provides simply for protecting the occupants of the land for three

years from the 16th day of January, 1865, a little less than two years from this time. If the section does anything, it simply prevents the restoration of this property to its former owners within that period, except upon terms to be entered into, satisfactory to the Commissioner, between the occupant and the former owner. This is all there is of it. It is a very different thing from taking away land from its former owners. The President says that it is unconstitutional to take land from a person except by due process of law, and that this section violates that provision of the Constitution which declares that no person shall be deprived of life, liberty, or property without due process of law. Now, what are the facts about these lands? General Sherman was marching with a Union army through the State of Georgia, from Atlanta to the sea-coast. When he arrived at Savannah there was following his army a large number of persons whom he had been feeding by the way, who were dependent upon him for subsistence, and he found a large tract of country entirely abandoned and waste. He issued an order authorizing and directing these followers of his army, the negroes, to settle upon these abandoned lands and guarantying to them military protection. The possession which they took was to be temporary. It is so stated in the order. Under this order some forty or fifty thousand persons settled upon these abandoned lands with the sanction of the President more than a year ago; and notwithstanding the quotation contained in the veto message of the clause of the Constitution declaring that no person shall be deprived of life, liberty, or property except by due process of law, I insist that a major general, under the circumstances, had a perfect right to take possession of these lands and place these persons upon them. It was a right of war. I go further, and I care not whether a house in Savannah was occupied or vacant, nor whether it belonged to a loyal or disloyal man, it was entirely competent for the commander of your army who entered Savannah, whence the rebel army fled on his approach, to take possession of any property belonging to loyal or disloyal men that in his judgment the exigencies of his condition required. These persons, therefore, were rightfully placed upon this land. If General Sherman had called a court and impaneled a jury to ascertain whether he could take possession of these abandoned lands and put the followers of his camp upon them, he would have been laughed at by the civilized world. And yet we are told that this is taking property contrary to the Constitution of the United States! It has been practiced all through the war, and it is a necessity of war.

Now, sir, I insist that these persons went rightfully upon these abandoned lands; and being there they are entitled to protection for a reasonable time. The military authority is not yet withdrawn from Georgia. They are rightfully there now. The faith of this nation, through its commanding general in that department and the approbation of the late President of the United States, is committed to these people who went upon these lands, set up their little homes, put in a crop, and supported themselves and relieved the Treasury. The faith of the nation is pledged to them in writing to protect them in this possession so long as the military jurisdiction continues; and that is not yet ended; and upon every principle of equity and justice they are entitled to be protected even beyond that time on the familiar principle that where a person enters upon an estate rightfully, as these people did, and is to hold it for an uncertain period, depending, if you please, upon the life of another, he cannot be turned off the moment that other dies; but he is entitled to hold the possession until he shall have had a reasonable time to gather his crops and remove the improvements which he may have put upon the place. Whether the time fixed by this bill is a reasonable time or not may depend upon circumstances. The former owners of the lands may make arrangements with the occupants to leave at any time, and the Com-

missioner of the Freedmen's Bureau is authorized to provide for them a home elsewhere. This provision of the bill is pronounced as unconstitutional, and as taking away land without due process of law. The land was taken by military authority, in the midst of war, and of course without process in any court, and rightly so.

But, says the President—

“Undoubtedly the freedmen should be protected, by the civil authorities, especially by the exercise of all the constitutional powers of the courts of the United States and of the States. He also possesses a perfect right to change his place of abode, and if, therefore, he does not find in one community or State a mode of life suited to his desires, or proper remuneration for his labor, he can move to another where that labor is more esteemed and better rewarded.”

Now, let us see how he will remove. I have in my hand a communication from Houston, Texas, dated December 15, 1865, from Colonel DeGress, addressed to Major General Howard, of the Freedmen's Bureau, which I will read :

“HOUSTON, TEXAS, *December 15, 1865.*

“SIR: I have the honor to respectfully report that in some portions of this State the negroes are not yet free, that the pass system is still in force, and when a freedman is found at large without a pass, he is taken up and whipped.”

That is the liberty he has to go from one place to another; that is the civil protection that he has.

“That a freedman is not allowed to hire out without written permission from his former master; at least planters have held meetings and have agreed not to hire freed people without such permission. These facts are known to me from personal observation and written statements of reliable men.”

Here is a letter from Lieutenant Stuart Eldridge to Major General Howard, dated Vicksburg, Mississippi, November 28, 1865 :

“I have the honor to inclose herewith for your consideration the freedmen's bill, which has just become a law in this State, and would respectfully ask your attention to the following points thereon :

“Section first prohibits the holding, leasing, or renting of real estate by freedmen.”

The President says these people are to be protected by the courts and by the civil authority. This is the protection they get in Mississippi. They are prevented from holding, leasing, or renting real estate.

“Section third compels all freedom to marry whomsoever they may now be living with, and to support the issue of what was in many cases compulsory cohabitation.

“Section fourth excludes freedmen from testifying in cases all white.

“Section five authorizes mayors and boards of police by their sole edict to prevent any freedmen from doing any independent business and to compel them to labor as employees, with no appeal from such decision.

“Section seven gives the power to any white citizen over the person of a freedman unknown to any other law, and denies the right of appeal beyond the county court.”

A telegram from Colonel Samuel Thomas, assistant commissioner, dated Jackson, Mississippi, and addressed to Major General O. O. Howard, is as follows :

“The freedmen bill has become a law. It does not allow freedmen to own or lease estate. Thousands of acres have been rented from owners of land by freedmen who expected that they would be allowed to cultivate land in this way. They are notified that they must give up their leases by citizens. What course must I pursue?”

To which the Commissioner replied as follows :

“While the bureau remains in Mississippi you will continue to protect the freedmen in the right to lease land. The act of the Legislature referred to in your telegram of the 27th is not yet recognized here.”

Here is another letter from Colonel Thomas, dated Vicksburg, Mississippi, December 13, and addressed to General Howard :

"The organization of the militia has had about the effect upon the country that I predicted last September. Nearly all the dissatisfaction that now exists among the freedmen is caused by the abusive conduct of this militia. It has assisted to paralyze labor and add to the combination of difficulties under which the State has labored. I do not know of one instance in which it has assisted in the restoration of law and order, or that they have exercised any power unless in something which would bring on a conflict with the national troops or hang some freedman or search negro houses for arms. Only a short time ago Governor Humphreys admitted to me that two companies of the militia had sworn that in their counties no negro who did not work for his old master and no Yankee could live, that they would 'drive out the thieving Yankees and shoot the niggers.' This is an extreme case, in which the Governor revoked the commissions of the officers and disbanded the companies. I believe his Excellency is in favor of conservative measures, and that many of the militia would blush at the recital of the outrages committed by some of the members."

I have here a number of communications of a similar character, showing that by the laws in some of the southern States a pass system still exists, and that the negro really has no protection afforded him either by the civil authorities or judicial tribunals of the State. I have letters showing the same thing in the State of Maryland from persons whose character is vouched for as reliable. Under this state of things, the President tells us that the freedman should be protected "by the exercise of all the constitutional powers of the courts of the United States and of the States!" In Kentucky, Major General Palmer, in response to a request that he should recommend the restoration of the *habeas corpus*, declined to do so—

"For the reason that returned rebels, of whom there are twenty thousand in that State, are openly regarded and treated as patriots, whereas loyal citizens and soldiers are objects of prejudice, dislike, and often of persecution; because courts in many instances are permitted to become the instruments of the vengeance of those who are hostile to loyal men; because laws are enforced tending to embarrass the citizens formerly slave but now freedmen, and that the Government is bound to protect them until they shall have the same privileges as other citizens before the law; because outrages have been committed upon negroes which have been allowed to go unpunished; in fact, no single instance has existed in which punishment has reached its aggressors, because negroes have been murdered and their murderers have escaped because of the legal incompetency of negroes to testify against them; and finally, because there are illegal combinations of men in the State got up to drive colored men out of it to prevent them finding employment, and such persons are allowed to act with impunity."

Then, sir, is there no necessity for some supervising care of these people? Are they to be coldly told that they have a perfect right to change their place of abode, when if they are caught in a strange neighborhood without a pass they are liable to be whipped; when combinations exist against them that they shall not be permitted to hire unless to their former master? Are these people, knowing nothing of geography, knowing not where to go, having never in their lives been ten miles from the place where they were born, these old women and young children, these feeble persons who are turned off because they can no longer work, to be told to go and seek employment elsewhere, and is the Government of the United States which has made them free to stand by and do nothing to save and protect them? Are they to be left to the mercy of such legislation as that of Mississippi, to such laws as exist in Texas, to such practices as are tolerated in Maryland and in Kentucky? Sir, I think some protection is necessary for them, and that was the object of this bureau. It was not intended, and such is not its effect, to interfere with the ordinary administration of justice in any State, not even during the rebellion. The moment that any State does justice and abolishes all discrimination between whites and blacks in civil rights, the judicial functions of the Freedmen's Bureau cease.



But, sir, the President most strangely of all dwells upon the unconstitutionality of this act, without ever having alluded to that provision of the Constitution which its advocates claim gives the authority to pass it. Is it not most extraordinary that the President of the United States returns a bill which has passed Congress, with his objections to it, alleging it to be unconstitutional, and makes no allusion whatever in his whole message to that provision of the Constitution which, in the opinion of its supporters, clearly gives the authority to pass it. And what is that? The second clause of the constitutional amendment, which declares that Congress shall have authority by appropriate legislation to enforce the article which declares that there shall be neither slavery or involuntary servitude throughout the United States. If legislation be necessary to protect the former slaves against State laws which allow them to be whipped if found away from home without a pass, has not Congress, under the second clause of the amendment, authority to provide it? What kind of freedom is that which the Constitution of the United States guaranties to a man that does not protect him from the lash if he is caught away from home without a pass? And how can we sit here and discharge the constitutional obligation that is upon us to pass the appropriate legislation to protect every man in the land in his freedom when we know such laws are being passed in the South if we do nothing to prevent their enforcement? Sir, so far from the bill being unconstitutional, I should feel that I had failed in my constitutional duty if I did not propose some measure that would protect these people in their freedom. And yet this clause of the Constitution seems to have escaped entirely the observation of the President.

I come now to the last of the objections to this bill, and I rejoice that it is the last, both because I am exhausted, and because it has been an unpleasant duty to dwell upon this veto message. The last objection which the President takes is this:

"I cannot but add another very grave objection to this bill. The Constitution imperatively declares, in connection with taxation, that each State shall have at least one Representative, and fixes the rule for the number to which, in future times, each State shall be entitled. It also provides that the Senate of the United States shall be composed of two Senators from each State; and adds, with peculiar force, 'that no State, without its consent shall be deprived of its equal suffrage in the Senate.' The original act was necessarily passed in the absence of the States chiefly to be affected, because their people were then contumaciously engaged in the rebellion. Now the case is changed, and some, at least, of those States are attending Congress by loyal Representatives, soliciting the allowance of the constitutional right of representation." \* \* \* \* \*

"At present all the people of eleven States are excluded—those who were most faithful during the war not less than others."

The President objects to this bill because it was passed in the absence of representation from the rebellious States. If that objection be valid, all our legislation affecting those States is wrong, and has been wrong from the beginning. When the rebellion broke out, in the first year of the war, we passed a law for collecting a direct tax, and we assessed that tax upon all the rebellious States. According to the theory of the President that was all wrong, because taxation and representation did not go together. Those States were not represented. Then, according to his argument—I will not read all of it—we were bound to have received their Representatives, or else not legislate for and tax them. He insists they were States in the Union all the time, and according to the Constitution each State is entitled to at least one Representative.

If the argument that Congress cannot legislate for States unrepresented is good now, it was good during the conflict of arms, for none of the States whose governments were usurped are yet relieved from military control. If we have no right to legislate for those States now, we had no right to im-

pose the direct tax on them. We had no right to pass any of our laws that affected them. We had no right to raise an army to march into the rebellious States while they were not represented in the Congress of the United States. We had no right to pass a law declaring these States in rebellion. Why? The rebels were not here to be represented in the American Senate. We had no right to pass a law authorizing the President to issue a proclamation discontinuing all intercourse with the people in those rebellious States; and why? Because they were not represented here. They are States, says the President, and each State is entitled to two Senators, and to at least one Representative. Suppose the State of South Carolina had sent to Congress during the war a Representative; had Congress nothing to do but to admit him? Must he be received because he comes from a State, and a State cannot go out of the Union? Why, sir, is anything more necessary than to state this proposition to show its absolute absurdity?

The rebel States are surely no more entitled to representation before they have set up governments recognized as loyal than when contumaciously engaged in the rebellion, and no such recognition has yet taken place.

I agree that they are States. I have never argued that question. I have never thought there was any great practical importance in the question about which so much has been said, whether these States were in the Union or out of the Union. My view of it is this; they are and have been in the Union for national purposes; we have a right to establish post-offices there; we have a right to appoint our custom-house officers there; we have a right to establish courts there. For national purposes they are States of the Union. What is their condition for State purposes? For State purposes, as State organizations, they were at one time certainly no part of the Union. Why? Because they set up an organization hostile to the Union. Every officer in the State of South Carolina, for instance, took an oath of allegiance to a government which had been set up in opposition to the Union. Now, while occupying that condition the State could not be represented here. Because in order to be represented there must be a State organization. There was no State organization in South Carolina for three or four years—none that we recognized. The State was there for national purposes; so far as the Federal Government legislated we held it in the Union; we kept it by our laws; we kept it by our arms; but that State by its own action destroyed its State organization, through which alone it could be represented in the national councils.

MR. COWAN. If the Senator will allow me—

MR. TRUMBULL. I shall be through with this point in a moment, and will then give way.

MR. COWAN. I wish to ask one question on this point.

MR. TRUMBULL. Let us have the question.

MR. COWAN. I ask by what rule the rebel is to be treated after he submits—by what law?

MR. TRUMBULL. He is to be hung, if he is a big rebel. [Great applause in the galleries.]

THE PRESIDING OFFICER. The Chair will state to the occupants of the galleries that it depends upon themselves whether they will stay here or not. Another infringement of the rule will compel the Chair to direct that the galleries be cleared. It must not be repeated.

MR. TRUMBULL. Now, sir, in order to have representation in Congress, there must be a State Legislature. The State Legislature of South Carolina, for illustration, was a disloyal legislature at war with the United States. It could not elect Senators. It was not a Legislature vested with any such authority. The State government was overthrown. Now, what has happened? Another State government it is said is set up. Is it the

old State government? Not at all. It is not the old constitution of South Carolina which is in force, but a new one. It is not a restoration of the old State organization. It is the construction of a new State government.

Mr. CONNESS. By rebels.

Mr. TRUMBULL. My friend says by rebels. I do not say that, but I say we are to decide who it is made by. It does not necessarily follow that it is the proper State organization to elect Senators to this body. That is a question that we must judge of. It does not necessarily follow that it is a State organization that is to be recognized with all the powers of a State in this Union. That is a question we have to decide. Whether a State organization has been established in any of the rebellious States which has authority to elect Senators, is a question Congress must decide; and if decided affirmatively, then, when proper persons present themselves, they are of course to be admitted. But that is a question the President cannot determine. It is a question to be decided by the United States, by the representatives of the people in Congress assembled. I care not how these State organizations are gotten up, whether with the aid and assistance of the President, under an act of Congress, or by the people themselves: it is enough for me to know, and it is all I want to know, that an organization has been established in any of the late rebellious States, fairly representing the loyal people of the State, which organization is loyal and true to the Union, and has the disposition and ability to maintain its authority in obedience to the Constitution and laws of the United States, and I will thank God and welcome it into full communion with other loyal States.

Who is to decide what constitutes a legitimate State government in any State was settled years ago by the Supreme Court of the United States, in a case growing out of the Dorr rebellion in Rhode Island, reported in 7 Howard, a case that has often been referred to in this Chamber. The question there was as to which of the two governments set up in the State of Rhode Island was the State government. An action was brought by a party attached to one government against a party attached to the other, and the Supreme Court decided that it was for Congress to determine what was the legitimate State government of a State.

This part of the message I am considering is, as it seems to me, somewhat foreign to the bill, unless it be intended to assume that the Congress of the United States can pass no law in reference to these rebellious States because they are not represented here. Why, sir, is the fact that we impose taxes on them to authorize them to representation? We impose taxes on the Territories. We have imposed taxes all the time upon the people of these rebellious States; and it would be strange doctrine if a man by becoming a rebel and the enemy of his country was to deprive his country of the means of taxing his property.

The President says "the bill under consideration refers to certain of the States, as though they had not been fully restored in all their constitutional relations to the United States." It does; and that seems to be a matter of surprise to the President. I should be greatly surprised to learn that certain of the States had been fully restored. I certainly was credulous enough to believe, when the privilege of the writ of *habeas corpus* was suspended in them, when martial law was prevailing all over them, that they were not restored to all their constitutional relations as States in the Union. But it seems that the President is surprised that that should have been assumed in this bill.

In my judgment it constitutes no sort of objection to this bill that certain States were unrepresented in Congress when it passed. They are not represented in consequence of their own fault, and for the reason that the President himself gives, because they are contumaciously engaged, if not in open

war, in hostility to the Government. Some of the State organizations are controlled by men who are passing unconstitutional laws, as I have shown you to-day; by men, some of whom went from the rebel Congress to the gubernatorial chairs in their States, and some from the field where they had been in hostile array against your Government. But, says the President, in this connection:

"The President of the United States stands toward the country in a somewhat different attitude from that of any member of Congress. Each member of Congress is chosen from a single district or State; the President is chosen by the people of all the States. As eleven States are not at this time represented in either branch of Congress, it would seem to be his duty, on all proper occasions, to present their just claims to Congress."

If it would not be disrespectful, I should like to inquire how many votes the President got in those eleven States. Sir, he is no more the representative of those eleven States than I am, except as he holds a higher position. I come here as a representative chosen by the State of Illinois, but I come here to legislate, not simply for the State of Illinois, but for the United States of America, and for South Carolina as well as Illinois. I deny that we are simply the representatives of the districts and States which send us here, or that we are governed by such narrow views that we cannot legislate for the whole country; and we are as much the representatives and in this particular instance received as much of the support of those eleven States as did the President himself.

Now, sir, I have gone through with this message; my comments have been made without an opportunity for preparation or much reflection. I have probably repeated much, but as I had taken an active part in urging this bill upon the consideration of the Senate before it passed, and as it was denounced as so unconstitutional, so extraordinary, and so unusual, I thought it due to myself, at least, that I should place before the Senate and the country the considerations by which I was governed in supporting the bill. The President believes it unconstitutional; I believe it constitutional. He believes that it will involve great expense; I believe it will save expense. He believes that the freedman will be protected without it; I believe he will be tyrannized over, abused, and virtually re-enslaved without some legislation by the nation for his protection. He believes it unwise; I believe it to be politic. I thought, in advocating it, that I was acting in harmony with the views of the President. I regret exceedingly the antagonism which his message presents to the expressed views of Congress, not only as to the proper mode to be pursued in reference to protecting the refugees and freedmen, but as to the present condition of the rebellious States. I shall rejoice as much as any one to have those States restored in all their constitutional relations at the earliest period consistent with the safety and welfare of the whole people. I shall rejoice when those States shall abolish all civil distinction between their inhabitants on account of race or color; and when that is done one great object of the Freedmen's Bureau will have been accomplished.

The Senator from Kentucky [Mr. GUTHRIE] told us he believed the same civil rights ought to be extended to all inhabitants, now that slavery is abolished. Sir, if the Southern States will do that, and protect the negro and the mulatto just as well as they protect the white man, there is no necessity and no occasion for the operations of the Freedmen's Bureau. I knew that the bill contained powers which could be abused in reckless hands; but I knew, also, they were to be under the President's control, who, I trusted, would not suffer them to be improperly exerted; and if not abused I thought they were salutary provisions to accomplish the object which we all had in view.

Now, sir, with these remarks, made without any unkind feeling toward the Executive, with whom I should be glad to agree, but in justification of my own position, I submit the bill, so far as I am concerned, to the decision of the Senate.

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The following is the vote on the passage of the bill, January 25 :

**YEAS**—Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Norton, Nye, Poland, Pomroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Williams, Wilson, and Yates—37.

**NAYS**—Messrs. Buckalew, Davis, Guthrie, Hendricks, Johnson, McDougall, Riddle, Saulsbury, Stockton, and Wright—10.

**ABSENT**—Messrs. Cowan, Nesmith, and Willey—3.

The following is the vote on the passage of the bill, "the objections of the President of the United States notwithstanding," February 20 :

**YEAS**—Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Trumbull, Wade, Williams, Wilson, and Yates—30.

**NAYS**—Messrs. Buckalew, Cowan, Davis, Dixon, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Morgan, Nesmith, Norton, Riddle, Saulsbury, Stewart, Stockton, Van Winkle, and Willey—18.

**ABSENT**—Messrs. Foot and Wright—2











